

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**TRUSTEE’S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
AMONG THE TRUSTEE, TODD ROSENBAUM
AND ROSENBAUM FEEDER CATTLE, LLC**

James A. Knauer, the Chapter 11 Trustee (“Trustee”) appointed in the above-captioned case (“Chapter 11 Case”) for the estate (“Estate”) of Eastern Livestock Co., LLC (“Debtor”), by counsel, respectfully moves this Court for an order approving the proposed compromise attached as Exhibit A (“Settlement Agreement”) among the Trustee, Todd Rosenbaum and Rosenbaum Feeder Cattle, LLC (collectively, “Rosenbaum”). The Trustee and Rosenbaum are collectively referred to as the “Parties” and each, a “Party.” In support of this motion, the Trustee says:

BACKGROUND & JURISDICTION

1. Certain petitioning creditors commenced the above-captioned Chapter 11 Case against the Debtor on December 6, 2010, by filing an involuntary petition for relief under Chapter 11 of the Bankruptcy Code. This Court entered an *Order For Relief in An Involuntary Case and Order to Complete Filing* [Dkt. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Dkt. No. 102] approving the United States Trustee’s Application for an Order Approving the Appointment of James Knauer as Chapter 11 Trustee [Dkt. No. 98] pursuant to 11 U.S.C. § 1104.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a) and FED. R. BANKR. P. 9019.

4. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Dkt. No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012 [Dkt. No. 1490] ("Plan"). The Court entered an Order on December 17, 2012 [Dkt. No. 1644] ("Confirmation Order") confirming the Plan.

5. On January 25, 2013, the Trustee commenced Adversary Proceeding No. 13-59002 (the "Adversary Proceeding") against Todd Rosenbaum. The Trustee asserted claims against Todd Rosenbaum for breach of contract, unjust enrichment and conversion. The Trustee later amended his complaint to include Rosenbaum Feeder Cattle, LLC.

6. Rosenbaum has asserted defenses in the Adversary Proceeding.

7. Rosenbaum Feeder Cattle, LLC filed in the Chapter 11 case a proof of claim ("POC"), claim no. 278, asserting claims against the Debtor's estate totaling \$150,823.92. The Trustee filed an objection (the "Objection") to the POC in the Chapter 11 case. (Ch. 11, Dkt. No. 2089).

SETTLEMENT

8. The Parties have negotiated a settlement of the claims and defenses between them asserted in the Adversary Proceeding and have agreed to settle upon the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A.

9. Under the proposed Settlement Agreement, Rosenbaum shall pay the Trustee the total sum of One Hundred Thousand Dollars (\$100,000) (the "Settlement Amount"). The

Settlement Amount shall be paid in accordance with the payment schedule set forth below. Each payment shall be referred to hereinafter as a “Payment”:

- a. Initial Payment due within ten (10) business days of the Effective Date:
\$25,000.
- b. Second Payment due by March 31, 2016 or within ten (10) business days
thereafter: \$12,500.00
- c. Third Payment due by June 30, 2016 or within ten (10) business days
thereafter: \$12,500.00
- d. Fourth Payment due by September 30, 2016 or within ten (10) business days
thereafter: \$12,500.00
- e. Fifth Payment due by December 31, 2016 or within ten (10) business days
thereafter: \$12,500.00
- f. Sixth Payment due by March 31, 2017 or within ten (10) business days
thereafter: \$12,500.00
- g. Final Payment due by June 30, 2017 or within ten (10) business days
thereafter: \$12,500.00

10. In addition, under the terms of the Settlement Agreement, Rosenbaum and the Trustee executed an Agreed Judgment, attached as Exhibit 1 to the Settlement Agreement, which would be held by the Trustee unless and until a Termination Event under the Settlement Agreement occurs. The Parties also agreed to mutually release each other from all claims or causes of action known or unknown, direct or indirect, related to the Chapter 11 Case, the Adversary Proceeding, the POC, or any business dealings whatsoever between Debtor and Rosenbaum Feeder Cattle, LLC, Todd Rosenbaum or any other entity owned by either. Rosenbaum Feeder Cattle, LLC also has agreed to file necessary papers in the Chapter 11 Case to waive, abandon, or otherwise withdraw its POC.

11. The Parties agreed that the proposed Settlement will be effective as of the date of entry of an order approving the Settlement (the “Effective Date”).

12. In the Trustee's professional judgment the proposed compromise as set forth in Exhibit A is in the best interest of the Estate and its creditors. The settlement will result in a recovery to the Estate and resolve contentious litigation.

13. In accordance with the terms of the Plan, the Settlement Amount received by the Trustee shall become part of the Collateral Fund (as that term is defined in the Plan).

BASIS FOR RELIEF

14. Bankruptcy Rule 9019(a) authorizes a bankruptcy court, on motion by a trustee and after appropriate notice and a hearing, to approve a compromise or settlement so long as the proposed compromise or settlement is fair and equitable and in the best interest of the estate. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

15. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding — the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

16. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall "within the reasonable range of litigation possibilities." Energy Co-op, 886 F.2d at 929.

17. The Settlement Agreement, negotiated at arm's length and in good faith, achieves a result that is in the best interest of the Debtor and its Estate in view of the evidence, the

expenses of litigation, and the obstacles to collecting any judgments. As set forth more specifically in Exhibit 1, the Settlement Agreement resolves the pending litigation without further motion practice, discovery, or a trial.

18. For these reasons, the Settlement Agreement maximizes the value of the Estate's assets and minimizes the burden to the Estate. The Settlement Agreement should be approved pursuant to Bankruptcy Rule 9019.

NOTICE

19. The Trustee will provide notice of this Motion pursuant to FED. R. BANK. P. 2002(a)(3) or as otherwise directed by this Court. The Notice shall include a definitive time in which any party will be required to file and serve an objection stating with specificity its objection.

CONCLUSION

For the foregoing reasons, the Trustee respectfully request that this Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Shawna Meyer Eikenberry

Counsel for James A. Knauer, Chapter 11 Trustee

Shiv Ghuman O'Neill (#23280-53A)
Shawna Meyer Eikenberry (#21615-53)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
shiv.oneill@faegrebd.com
shawna.eikenberry@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

Kay Dee Baird
kbaird@klegal.com

C. R. Bowles, Jr
cbowles@bgdlegal.com

Kent A Britt
kabritt@vorys.com

Lisa Koch Bryant
courtmail@fbhlaw.net

Deborah Caruso
dcaruso@daleeke.com

Joshua Elliott Clubb
joshclubb@gmail.com

Jack S. Dawson
jdawson@millerdollarhide.com

David Alan Domina
dad@dominalaw.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

Robert Hughes Foree
robertforee@bellsouth.net

Thomas P. Glass
tpglass@strausstroy.com

Paul M. Hoffman
paul.hoffmann@stinsonleonard.com

Jeffrey L Hunter
jeff.hunter@usdoj.gov

Todd J. Johnston
tjohnston@mcjllp.com

Edward M King
tking@fbtlaw.com

Theodore A. Konstantinopoulos
ndohbky@jbandr.com

David L. LeBas
dlebas@nahanhowell.com

Elliott D. Levin
edl@rubin-levin.net

Karen L. Lobring
lobring@msn.com

John D Dale, Jr.
Johndaleatty@msn.com

Christopher E. Baker
cbaker@thbkllaw.com

David W. Brangers
dbrangers@lawyer.com

Kayla D. Britton
kayla.britton@faegrebd.com

John R. Burns, III
john.burns@faegrebd.com

Ben T. Caughey
ben.caughey@icemiller.com

Jason W. Cottrell
jwc@stuartlaw.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

Jeffrey R. Erler
jerler@ghjhlaw.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

Patrick B. Griffin
patrick.griffin@kutakrock.com

John David Hoover
jdhoover@hooverhull.com

Jay Jaffe
jay.jaffe@faegrebd.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

James A. Knauer
jak@kgrlaw.com

Randall D. LaTour
rdlatour@vorys.com

Martha R. Lehman
mlehman@klegal.com

Kim Martin Lewis
kim.lewis@dinslaw.com

Jason A. Lopp
jlopp@wyattfirm.com

John W. Ames
james@bgdlegal.com

Robert A. Bell
rabell@vorys.com

Steven A. Brehm
sbrehm@bgdlegal.com

Joe Lee Brown
Joe.Brown@Hardincounty.biz

John R. Carr, III
jrciii@acs-law.com

Bret S. Clement
bclement@acs-law.com

Kirk Crutcher
kcrutcher@mcs-law.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Trevor L. Earl
tearl@rwsvlaw.com

William K. Flynn
wkflynn@strausstroy.com

Melissa S. Giberson
msgiberson@vorys.com

Terry E. Hall
terry.hall@faegrebd.com

John Huffaker
john.huffaker@sprouselaw.com

James Bryan Johnston
bjtexas59@hotmail.com

Jay P. Kennedy
jpk@kgrlaw.com

Erick P. Knoblock
eknoblock@daleeke.com

David A. Laird
david.laird@moyewwhite.com

Scott R. Leisz
sleisz@bgdlegal.com

James B. Lind
jblind@vorys.com

John Hunt Lovell
john@lovell-law.net

Harmony A. Mappes
harmony.mappes@faegrebd.com

Kelly Greene McConnell
lisahughes@givenspursley.com

William Robert Meyer, II
rmeyer@stites.com

Allen Morris
amorris@stites.com

Matthew Daniel Neumann
mneumann@hhclaw.com

Matthew J. Ochs
kim.maynes@moyewhite.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Eric W. Richardson
ewrichardson@vorys.com

Mark A. Robinson
mrobinson@vhrlaw.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Nicole R. Sadowski
nsadowski@thbkllaw.com

Ivana B. Shallcross
ishallcross@bgdlegal.com

James E. Smith, Jr.
jsmith@smithakins.com

Joshua N. Stine
kabritt@vorys.com

Meredith R. Theisen
mtheisen@daleeke.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Andrew James Vandiver
avandiver@aswdlaw.com

Ronald J. Moore
Ronald.Moore@usdoj.gov

Jason P. Wischmeyer
jason@wischmeyerlaw.com

John Frederick Massouh
john.massouh@sprouselaw.com

James Edwin McGhee
mcghee@derbycitylaw.com

Kevin J. Mitchell
kevin.mitchell@faegrebd.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

Walter Scott Newbern
wsnewbern@msn.com

Jessica Lynn Olsheski
jessica.olsheski@justice-law.net

Brian Robert Pollock
bpollock@stites.com

Anthony G. Raluy
traluy@fbhlaw.net

Joe T. Roberts
jratty@windstream.net

Jeremy S. Rogers
Jeremy.Rogers@dinslaw.com

James E. Rossow
jim@rubin-levin.net

Thomas C. Scherer
tscherer@bgdlegal.com

Sarah Elizabeth Sharp
sarah.sharp@faegrebd.com

William E. Smith, III
wsmith@k-glaw.com

Andrew D. Stosberg
astosberg@lloydmc.com

John M. Thompson
john.thompson@crowedunlevy.com

Chrisandrea L. Turner
clturner@stites.com

Andrea L. Wasson
andrea@wassonthornhill.com

Sean T. White
swhite@hooverhull.com

James T. Young
james@rubin-levin.net

Michael W. McClain
mmclain@mcclaindeweese.com

Brian H. Meldrum
bmeldrum@stites.com

Terrill K. Moffett
kendalcantrell@moffettlaw.com

Erin Casey Nave
enave@taftlaw.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Michael Wayne Oyler
moyler@rwsvlaw.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

David Cooper Robertson
crobertson@stites.com

John M. Rogers
johnr@rubin-levin.net

Steven Eric Runyan
ser@kgllaw.com

Stephen E. Schilling
seschilling@strausstroy.com

Suzanne M Shehan
suzanne.shehan@kutakrock.com

Amanda Dalton Stafford
ads@kgllaw.com

Matthew R. Strzynski
indyattorney@hotmail.com

Kevin M. Toner
kevin.toner@faegrebd.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

Jennifer Watt
jwatt@kgllaw.com

Michael Benton Willey
michael.willey@ag.tn.gov

I further certify that on January 20, 2016, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Thomas Richard Alexander, II
tra@rgba-law.com

/s/ Shawna Meyer Eikenberry